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7 Attorneys for Defendants CONTRA COSTA COUNTY,
SHERIFF WARREN RUPF, SHERIFF'S DEPUTY MATT FOLEY,
8 and SHERIFF'S DEPUTY ERIK STEELE
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12
13

14 GREGORY CLOUTHIER, individually
and on behalf of the ESTATE OF
15 ROBERT JOHN CLOUTHIER;
ANN CLOUTHIER, individually and on
16 behalf of the ESTATE OF ROBERT
JOHN CLOUTHIER,
17

18 Plaintiffs,

19 v.

20 COUNTY OF CONTRA COSTA,
et al.,
21

Defendants.
22

No. C 06 - 03893 MMC

STIPULATED PROTECTIVE ORDER
23

24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of confidential,
26 proprietary, or private information for which special protection from public disclosure and from use
27 for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties
28 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords extends only to the limited information or items that are
3 entitled under the applicable legal principles to treatment as confidential. The parties further
4 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no
5 entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
6 that must be followed and reflects the standards that will be applied when a party seeks permission
7 from the court to file material under seal.

8 9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and outside counsel (and their support staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
15 in this matter.

16 2.3 "Confidential" Information or Items: information (regardless of how generated,
17 stored or maintained) or tangible things that qualify for protection under standards developed under
18 F.R.Civ.P. 26(c).

19 2.4 "Highly Confidential – Review by Authorized Personnel Only" Information or Items:
20 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty
21 would create a substantial risk of serious injury that could not be avoided by less restrictive means.

22 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
23 Producing Party.

24 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
25 Material in this action.

26 2.7. Designating Party: a Party or non-party that designates information or items
27 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential
28 — Review by Authorized Personnel Only."

1 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
2 “Confidential” or as “Highly Confidential – Review by Authorized Personnel Only.”

3 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
4 retained to represent or advise a Party in this action.

5 2.10 House Counsel: attorneys who are employees of a Party.

6 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
7 their support staffs).

8 2.12 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness
10 or as a consultant in this action and who is not a past or a current employee of a Party or of a
11 competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of
12 a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant
13 retained in connection with this litigation.

14 2.13 Professional Vendors: persons or entities that provide litigation support
15 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
16 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
17 subcontractors.

18

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected Material (as
21 defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts,
22 summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or
23 counsel to or in court or in other settings that might reveal Protected Material.

24

25 4. DURATION

26 Even after the termination of this litigation, the confidentiality obligations imposed by this
27 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
28 otherwise directs.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
 3 non-party that designates information or items for protection under this Order must take care to limit
 4 any such designation to specific material that qualifies under the appropriate standards. A Designating
 5 Party must take care to designate for protection only those parts of material, documents, items, or oral
 6 or written communications that qualify – so that other portions of the material, documents, items, or
 7 communications for which protection is not warranted are not swept unjustifiably within the ambit of
 8 this Order. Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 9 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
 10 encumber or retard the case development process, or to impose unnecessary expenses and burdens on
 11 other parties), expose the Designating Party to sanctions. If it comes to a Party's or a non-party's
 12 attention that information or items that it designated for protection do not qualify for protection at all,
 13 or do not qualify for the level of protection initially asserted, that Party or non-party must promptly
 14 notify all other parties that it is withdrawing the mistaken designation.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
 16 e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that
 17 qualifies for protection under this Order must be clearly so designated before the material is disclosed
 18 or produced. Designation in conformity with this Order requires:

19 (a) for information in documentary form (apart from transcripts of depositions or
 20 other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
 21 "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY" at the top of
 22 each page that contains protected material. If only a portion or portions of the material on a page
 23 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 24 making appropriate markings in the margins) and must specify, for each portion, the level of
 25 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY
 26 AUTHORIZED PERSONNEL ONLY"). A Party or non-party that makes original documents or
 27 materials available for inspection need not designate them for protection until after the inspecting
 28 Party has indicated which material it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be deemed "HIGHLY
2 CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY." After the inspecting Party
3 has identified the documents it wants copied and produced, the Producing Party must determine which
4 documents, or portions thereof, qualify for protection under this Order, then, before producing the
5 specified documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
6 "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY") at the top of
7 each page that contains Protected Material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
9 making appropriate markings in the margins) and must specify, for each portion, the level of
10 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY
11 AUTHORIZED PERSONNEL ONLY").

12 (b) for testimony given in deposition or in other pretrial or trial proceedings,
13 that the Party or non-party offering or sponsoring the testimony identify on the record, before the close
14 of the deposition, hearing, or other proceeding, all protected testimony, and further specify any
15 portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED
16 PERSONNEL ONLY." When it is impractical to identify separately each portion of testimony that is
17 entitled to protection, and when it appears that substantial portions of the testimony may qualify for
18 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
19 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the
20 specific portions of the testimony as to which protection is sought and to specify the level of protection
21 being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED
22 PERSONNEL ONLY"). Only those portions of the testimony that are appropriately designated for
23 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.
24 Transcript pages containing Protected Material must be separately bound by the court reporter, who
25 must affix to the top of each such page the legend "CONFIDENTIAL" or "HIGHLY
26 CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY," as instructed by the Party
27 or nonparty offering or sponsoring the witness or presenting the testimony.

28 (c) for information produced in some form other than documentary, and for

any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY." If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Review by Authorized Personnel Only."

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as "Confidential" or "Highly Confidential – Review by Authorized Personnel Only" does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" or "Highly Confidential – Review by Authorized Personnel Only" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
 2 designation after considering the justification offered by the Designating Party may file and serve a
 3 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that
 4 identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion
 5 must be accompanied by a competent declaration that affirms that the movant has complied with the
 6 meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity
 7 the justification for the confidentiality designation that was given by the Designating Party in the meet
 8 and confer dialogue. The burden of persuasion in any such challenge proceeding shall be on the
 9 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
 10 material in question the level of protection to which it is entitled under the Producing Party's
 11 designation.

12 13 7. ACCESS TO AND USE OF PROTECTED MATERIAL

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 15 produced by another Party or by a non-party in connection with this case only for prosecuting,
 16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 17 categories of persons and under the conditions described in this Order. When the litigation has been
 18 terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
 19 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location
 20 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
 22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose
 23 any information or item designated CONFIDENTIAL only to:

24 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 25 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 26 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 27 hereto as Exhibit A;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the
 2 "Agreement to Be Bound by Protective Order" (Exhibit A);

3 (c) experts (as defined in this Order) of the Receiving Party to whom
 4 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound
 5 by Protective Order" (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom disclosure is
 8 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
 9 Protective Order" (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom disclosure is
 11 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
 12 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
 13 Protected Material must be separately bound by the court reporter and may not be disclosed to anyone
 14 except as permitted under this Stipulated Protective Order.

15 (g) the author of the document or the original source of the information.

16
 17 7.3 Disclosure of "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED
 18 PERSONNEL ONLY" Information or Items. Unless otherwise ordered by the court or permitted in
 19 writing by the Designating Party, a Receiving Party may disclose any information or item designated
 20 "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY" only to:

21 (a) the Receiving Party's Outside Counsel of record in this action, as well as
 22 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
 23 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
 24 hereto as Exhibit A;

25 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
 26 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order"
 27 (Exhibit A);

28 (c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – REVIEW BY AUTHORIZED PERSONNEL ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person
2 or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
3 such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
4 hereto as Exhibit A.

5
6 10. FILING PROTECTED MATERIAL.

7 Without written permission from the Designating Party or a court order secured after
8 appropriate notice to all interested persons, a Party may not file in the public record in this action any
9 Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil
10 Local Rule 79-5.

11
12 11. FINAL DISPOSITION.

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
14 the final termination of this action, each Receiving Party must return all Protected Material to the
15 Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
16 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
17 With permission in writing from the Designating Party, the Receiving Party may destroy some or all of
18 the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed,
19 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
20 person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
22 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of
23 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
24 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
25 correspondence or attorney work product, even if such materials contain Protected Material. Any such
26 archival copies that contain or constitute Protected Material remain subject to this Protective Order as
27 set forth in Section 4 (DURATION), above.

1 12. MISCELLANEOUS


2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
3 to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
7 Party waives any right to object on any ground to use in evidence of any of the material covered by
8 this Protective Order.

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2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3
4 Date: January 16, 2007

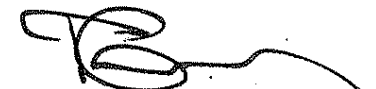
5 By: 
6 STAN CASPER
7 Attorney for Plaintiffs
8 GREGORY and ANNE
9 CLOUTHIER

10
11 Date: January 17, 2007

SILVANO B. MARCHESI, County Counsel

12 By: 
13 JANET L. HOLMES
14 Deputy County Counsel
15 Attorneys for Defendants
16 CONTRA COSTA COUNTY,
17 SHERIFF WARREN RUPF, ERIK
18 STEELE and MATT FOLEY

19
20 Date: January 17, 2007

21 By: 
22 THOMAS MANNING
23 Attorney for Defendant
24 MARGARET BLUSH

25 ORDER

26 Pursuant to the foregoing Stipulation of the parties, and good cause appearing
27 therefore, IT IS SO ORDERED.

28 DATED: January 22, 2007


MAXINE M. CHESNEY
UNITED STATES DISTRICT COURT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
 of _____ [print or type full
 address], declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for the Northern
 District of California on February __, 2005 in the case of *George Richard Hooper v. Contra*
Costa County, et al.; Case No. C04 1091 CW (JCS). I agree to comply with and to be bound by all
 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this Stipulated
 Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]